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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.          | CONFIRMATION NO.  |
|---|-------------|----------------------|------------------------------|-------------------|
| 09/754,913  | 01/03/2001  | William J. Bolosky   | MSI-411USC2                  | 3937              |
| 22801   | 7590        | 04/21/2004           | EXAMINER<br>MEKY, MOUSTAFA M |                   |
| LEE & HAYES PLLC<br>421 W RIVERSIDE AVENUE SUITE 500<br>SPOKANE, WA 99201 |             |                      | ART UNIT<br>2157             | PAPER NUMBER<br>7 |

DATE MAILED: 04/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/754,913

Applicant(s)

BOLOSKY ET AL.

Examiner

Moustafa M Meky

Art Unit

2157

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 01 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-19 and 23-31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 and 23-31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

1. The amendment filed 4/1/2004 has been entered and considered by the examiner.
2. Claims 1-19 & 23-31 are presenting for examination (claims 20-22 were canceled by the applicant).
3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 1-19 & 23-31 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-10, 14-21, 24-27, 30 & 33-37 of U.S. Patent No. 6,339,794. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the patent 794 teaches substantially the claimed limitations.

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

6. Claims 1-3, 5-6, 8-11, 13-17, 23-25, 27-29 are rejected under 35 U.S.C. 102(a) as being anticipated by Northcutt (US Pat. No. 5,442,749).

7. As to claims 1-3, 5-6, 8-10, Northcutt shows in Fig 2, a computer network 235 having a client 290 and a media server 200. Northcutt teaches the limitations of:

- providing protocol that facilitates creation of connections (channel connection and data connection) between the server 200 and the client 290, see the abstract, lines 16-21, col 3, lines 47-49, col 6, lines 1-12, lines 49-50;
- create a control connection between the server 200 and the client 290 to facilitate exchange of control information between the server 200 and the client 290, see col 6, lines 50-52;
- create a data connection between the server 200 and the client 290 to facilitate the exchange of data between the server 200 and the client 290 at a rate substantially equal to a rate at which the client consumes the data (see the abstract, lines 9-12, col 3, lines 37-41, col 6, lines 39-42), see col 6, lines 52-53, col 9, lines 64-66.

8. As to claims 11, 13-17, 23-25, 27-29, the claims are similar in scope to claims 1-3, 5-6, 8-10, and they are rejected under the same rationale.

Therefore, it can be seen from paragraphs 7-8 that Northcutt anticipates claims 1-3, 5-6, 8-11, 13-17, 23-25, 27-29.

9. Claims 4, 7, 12, 18, 30-31 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

9.1. The prior art of record does not teach:

- creating a multipoint-to-point connection between data servers and the client (see claims 4 & 12);
- cause data from the client to be passed over the data connection to the media server to be written on the storage at the media server (see claims 7 & 30);
- sending multiple requests for service from the client over the control channel to the media server such that the multiple requests are concurrently outstanding (see claim 18);
- generating a message that holds multiple messages for transmission over the control channel to the media server (see claim 31).

10. Claims 19 & 26 are allowed over the prior art of record.

10.1. The prior art of record does not teach the limitations of claims 19 & 26.

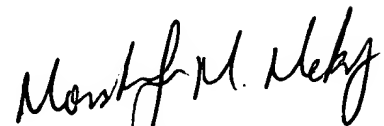
11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Moustafa M Meky whose telephone number is 703-305-9697. The examiner can normally be reached on flex.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on 703-305-4792. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

M.M.M.  
April 15, 2004

  
MOUSTAFA M. MEKY  
PRIMARY EXAMINER